

MICHIGAN SUPREME COURT



Office of Public Information

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CHILD'S STATEMENT ABOUT ABUSE OR NEGLECT COULD BE SUPPLIED BY ONE WHO HEARD IT UNDER PROPOSED RULE; SUPREME COURT SEEKS COMMENTS AT SEPTEMBER 27 PUBLIC HEARING

Other proposed changes to child protection proceeding rules to be considered

LANSING, MI, September 19, 2006 – A child's statement about abuse or neglect could be brought into evidence in a child protective proceeding by a person who heard the child make the statement, under a proposed court rule change being considered by the Michigan Supreme Court.

Generally, court evidence rules bar hearsay – evidence based on what someone else told a witness – although there are some exceptions. Michigan Court Rule (MCR) 3.972 currently provides that “the person to whom the statement is made” may testify about a child's statement “regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation.” The proposed amendment would expand the rule to allow any “person who heard the child make the statement” to testify. As with the current rule, the amended rule would apply to statements made by children under 10 or developmentally disabled people under 18 (**ADM File No. 2005-22**).

The proposal is on the Michigan Supreme Court's public hearing agenda for September 27. The hearing will start at 9:30 a.m. in the Supreme Court courtroom on the 6th floor of the Michigan Hall of Justice; the hearing will adjourn no later than 11:30 a.m.

Also on the Court's public hearing agenda are a number of proposed revisions to family court rules (**ADM File No. 2005-04**) that would affect child protective proceedings. In 2004, the Michigan Juvenile Code was amended to make state law conform more closely to the federal Adoption and Safe Families Act (ASFA), and to meet the requirements of Title IV-E of the Social Security Act, which governs federal funding of state foster care systems. One proposed change would allow a family court judge or referee to authorize the removal of a child from a home “upon presentment of proofs,” rather than on the basis of a formal petition, as the current rule requires. Another change, to MCR 3.972, would require the family court to hold review hearings within 182 days of a child's removal from the home, regardless of whether the child protection trial has been completed. A staff comment states that the proposed amendment would conform the court rule to ASFA timing requirements, “thereby ensuring that children in foster care will receive federal funding.”

Another proposal (**ADM File No. 2006-08**) would give court-appointed lawyers less time to file motions to withdraw from parental rights termination appeals. Court rules provide that parents

who cannot afford an attorney may have court-appointed counsel to appeal termination of their parental rights. MCR 7.211 states that “A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.” Under the current version of that rule, the deadline for a motion to withdraw is 56 days after the appellant is served with the trial court’s order terminating parental rights; the proposed change would shorten that deadline to 28 days. Another appellate rule change (**ADM File No. 2004-44**) would allow an attorney to order only those lower court transcripts needed for an appeal from a court’s decision to terminate parental rights. Currently, appellate rules -- but not family court rules -- require the appealing party to order the full lower court transcript.

The Court regularly holds hearings as part of its public comment process for proposed court rules and other administrative matters, and invites members of the public to share their views on agenda items. Anyone wishing to speak at the hearing should contact the Clerk of the Court at P.O. Box 30052, Lansing, Michigan 48909 or at MSC_clerk@courts.mi.gov, no later than Monday, September 25. In reserving time to speak on a proposal, please refer to the proposal’s ADM file number. Speakers will have three minutes each; Justices may ask the speakers questions.

Among the other proposed changes on the Court’s public hearing agenda:

- An amendment to MCR 6.106 that would govern bail for defendants in child support cases (**ADM File No. 2003-38**). If the defendant is being held on a criminal warrant for failure to pay child support, “the court must set the bond at not less than \$500 or 25 percent of the unpaid support arrearage, whichever is greater, except for good cause shown on the record,” the proposed revision states.
- An amendment to allow parties in juvenile cases to file records with the court by fax (**ADM File No. 2005-43**).
- Revisions that would extend from seven to 14 days the time to answer certain motions in the Court of Appeals; the changes would also establish a new category of motions that the Court of Appeals can decide without waiting for the answer period to expire. Other changes concern deadlines for answers to motions for immediate consideration (**ADM File No. 2006-07**).
- A change to MCR 2.420 that would apply to cases in which a minor or legally incapacitated adult is entitled to settlement proceeds of more than \$5,000 per year. The proposed revision would require that payments must be made to the minor’s or incapacitated adult’s conservator (**ADM File No. 2006-15**).
- Revisions which would govern proceedings for individuals hospitalized without a hearing. Currently, MCR 5.744 is limited to proceedings for modifying court orders that provides for alternative treatment programs. Among other things, the proposed changes would extend the rule’s requirements to all proceedings in which a party seeks to have a person hospitalized without a hearing (**ADM File No. 2006-17**).

To see the full text of proposed court rules, go to <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>. The public hearing agenda may be viewed at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm>.

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